

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appl. No.	: 09/632,774	Confirmation No.	2126
First Named Inventor	: Haitzuka		
Filed	: August 4, 2000		
TC/A.U.	: 1751		
Examiner	: Nguyen, Tri V		
Docket No.	: U000-P02009US		
Customer No.	: 33356		

Mail Stop Appeal Brief- Patents  
Commissioner for Patents  
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**APPEAL BRIEF UNDER 37 C.F.R. § 41.37**

Dear Sir:

The following Appeal Brief is submitted pursuant to the Notice of Appeal dated August 8, 2007 for consideration by the Board of Appeals and Interferences. 37 C.F.R. § 41.37.

**(i) REAL PARTY IN INTEREST**

The real party in interest is NetZero, Inc.

**(ii) RELATED APPEALS AND INTERFERENCES**

There are no applications currently being appealed that may directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(iii) STATUS OF CLAIMS**

Claims 1-25 were pending and rejected in the Final Office Action dated May 14, 2007. Claims 1-25 are pending and are the subject of this appeal.

**(iv) STATUS OF AMENDMENTS**

There are no amendments that were filed prior to or after the Final Office Action.

**(v) SUMMARY OF CLAIMED SUBJECT MATTER**

References are to the application as filed pursuant to 37 CFR 41.37(c)(1)(v).

**Independent Claim 1**

A method of displaying advertisements (Fig. 5, 520; p. 26, lines 10-11; p. 29, lines 1-2) to a user of an online service provider (p. 5, line 17 – p. 6, line 17; p. 13, line 16) using a client application (Fig. 2, 110; p. 15, line 17 - p. 16, line 2) on a local device, the local device (Figs 1 and 2, 100; p. 13, line 17 – p. 14, line 8) including an input device (Fig. 1, 102; p. 14, lines 1-3) and an output device (Fig. 1, 101; p. 14, line 1), the client application accessing an online server (Figs. 1 and 2, 130; p. 13, lines 12-18; p. 15, lines 3-8) associated with the online service provider and providing access to the Internet (Figs. 1 and 2, 120, p. 6, lines 1-3; p. 14, lines 9-15), the method comprising:

- a) the client application activating (Fig. 5, 510; Fig. 7, 710; p. 26, line 1; p. 36, lines 1-2);
- b) the client application commencing an initial online session with the online service provider to gain access to the Internet (Fig. 4, 410; Fig. 7, 715; p. 16, lines 15-16; p. 22, lines 6-11, 17-20; p. 36, lines 1-5, 12-15), the client application operating independently of an Internet browser and operating concurrently with the Internet browser (Fig. 2, 110 and 160; p. 15, line 14 - p. 16, line 2; p. 16, lines 8-12; p. 17, lines 17-19; p. 33, lines 4-6);
- c) the client application receiving sponsorship data from the online service provider (p. 36, lines 18-20), the sponsorship data comprising a sponsorship object including a resource locator associated with a sponsorship label to be displayed and a resource locator associated with a click-through of the sponsorship label (Fig. 7, 720; p. 36, line 19 – p. 37, line 3);
- d) the client application causing a client window (Fig. 3, 200; p. 18, lines 13-15) to be displayed on the output device (Figs. 1 and 3, 101), the client window remaining fully visible (p. 21, lines 7-18) so long as the online session with the online service provider persists (p. 21, lines 8-9),

wherein the client window is displayed independently of a browser window generated by the Internet browser (Fig. 3, 200 and 300; p. 18, lines 13-16);

e) the client application displaying a sponsorship label on the client window by referring to the resource locator associated with the sponsorship label to be displayed (p. 37, lines 10-13), the sponsorship label comprising a hypertext link, wherein, when the user clicks on the sponsorship label, the client application causes the local device to access the resource locator associated with a click-through of the sponsorship label (p. 37, lines 13-18);

f) the client application causing a first advertisement to be displayed in the client window, wherein the client application retrieves the first advertisement from a memory cache local to the local device (p. 26, lines 11-17; p. 38, lines 3-8; p. 39, lines 13-14);

g) the client application receiving a second advertisement from the online server (p. 27, lines 6-14; p. 38, lines 16-18);

h) the client application causing the second advertisement to be displayed in the client window (p. 39, lines 3-4).

### **Independent Claim 7**

A method of displaying sponsorship information (Fig. 8, 722; p. 37, lines 11-13, 19-20) to a user of an online service provider (p. 5, line 17 – p. 6, line 17; p. 13, line 16) using a client application (Fig. 2, 110; p. 15, line 17 – p. 16, line 2) on a local device (Figs 1 and 2, 100; p. 13, line 17 – p. 14, line 8), the local device including an input device (Fig. 1, 102; p. 14, lines 1-3) and an output device (Fig. 1, 101; p. 14, line 1), the client application accessing an online server (Figs. 1 and 2, 130; p. 13, lines 12-18; p. 15, lines 3-8) associated with the online service provider and providing access to the Internet (Figs. 1 and 2, 120, p. 6, lines 1-3; p. 14, lines 9-15), the method comprising:

- a) the client application activating (Fig. 5, 510; Fig. 7, 710; p. 26, line 1; p. 36, lines 1-2);
- b) the client application commencing an online session with the online service provider (Fig. 4, 410; Fig. 5, 525; Fig. 7, 715; p. 16, lines 15-16; p. 22, lines 6-11; p. 36, lines 1-5, 12-15), the client application operating independently of an Internet browser and operating concurrently with the

Internet browser (Fig. 2, 110 and 160; p. 15, line 14 - p. 16, line 2; p. 16, lines 8-12; p. 17, lines 17-19; p. 33, lines 4-6);

c) the client application receiving sponsorship data from the online service provider (p. 36, pages 18-20), the sponsorship data comprising a sponsorship object including a resource locator associated with a sponsorship label to be displayed (Fig. 7, 720; p. 36, line 19 – p. 37, line 3);

d) the client application causing a client window (Fig. 3, 200; p. 18, lines 13-15) to be displayed on the output device (Figs. 1 and 3, 101), the client window remaining fully visible and on top of all other windows (p. 21, lines 7-18) so long as the online session with the online service provider persists (p. 21, lines 8-9), wherein the client window is displayed concurrently with a browser window generated by the Internet browser (Fig. 3, 200 and 300; p. 18, lines 13-16);

e) the client application causing the sponsorship label to be displayed on the client window (p. 37, lines 10-13), the sponsorship label comprising a hypertext link to be accessed if a user clicks on the sponsorship label (p. 37, lines 13-18);

f) the client application retrieving a first advertisement from a memory cache local to the local device (p. 26, lines 11-17; p. 38, lines 4-8; p. 39, lines 13-14);

g) the client application causing the first advertisement to be displayed in the client window (p. 38, lines 3-4; p. 39, lines 13-14).

### **Independent Claim 11**

A system for selecting advertisements (Fig. 5, 520; p. 26, lines 10-11; p. 29, lines 1-2) for display to a user of an online service provider (p. 5, line 17 – p. 6, line 17; p. 13, line 16), the system comprising a computer program product comprising a computer usable medium having software (p. 15, lines 17-18) for causing a local device (Figs 1 and 2, 100; p. 13, line 17 – p. 14, line 8) to:

a) commence an online session with an online service provider through which the user accesses the Internet (Fig. 7, 715; p. 16, lines 15-16; p. 36, lines 1-5, 12-15);

b) display a client window (Fig. 3, 200; p. 18, lines 13-15) on an output device (Figs. 1 and 3, 101) of the local device, the client window remaining fully visible and on top of all other windows (p. 21, lines 7-18) so long as the online session persists (p. 21, lines 7-18) and the client window is

displayed independently of and concurrently with a browser window generated by an Internet browser (Fig. 3, 200 and 300; p. 18, lines 13-16; p. 33, lines 4-6);

c) obtain sponsorship data from the online service provider (p. 36, lines 18-20), the sponsorship data comprising a sponsorship object including a resource locator associated with a sponsorship label to be displayed in the client window (Fig. 7, 720; p. 36, line 19 – p. 37, line 3);

d) display the sponsorship label in the client window (p. 37, lines 10-13), the sponsorship label comprising a hypertext link associated with a resource locator to be accessed if a user clicks on the sponsorship label (p. 37, lines 13-18);

e) retrieve a first advertisement from a memory cache local to the local device (p. 26, lines 11-17; p. 29, lines 3-9; p. 38, lines 4-8);

f) display the first advertisement in the client window (p. 26, lines 11-17; p. 38, lines 3-6; p. 39, lines 13-14).

#### **Independent Claim 15**

A system (Figs. 1 and 2, OSP server130; p. 15, lines 3-8) for selecting advertisements (Fig. 5, 520; p. 26, lines 10-11; p. 29, lines 1-2) for display to a user of an online service provider (p. 5, line 17 – p. 6, line 17; p. 13, line 16), the system comprising a computer program product comprising a computer usable medium having software (p. 15, lines 17-18) for causing a local device (Figs 1 and 2, 100; p. 13, line 17 – p. 14, line 8) to:

a) commence an online session with the online service provider (Fig. 7, 715; p. 16, lines 15-16; p. 36, lines 1-5, 12-15);

b) obtain sponsorship data from the online service provider (p. 36, pages 18-20), the sponsorship data comprising a sponsorship object including a resource locator associated with a sponsorship label to be displayed and a resource locator associated with a click-through of the sponsorship label (Fig. 7, 720; p. 36, line 19 – p. 37, line 3);

c) display a client window (Fig. 3, 200; p. 18, lines 13-15) on the output device (Figs. 1 and 3, 101), the client window remaining fully visible and on top of all other windows while the online session persists with the online service provider (p. 21, lines 7-18), wherein the client window is

displayed independently of a browser window generated by an Internet browser (Fig. 3, 200 and 300; p. 18, lines 13-16);

- d) display the sponsorship label in the client window (p. 37, lines 10-13), the sponsorship label comprising a hypertext link (p. 37, lines 13-18);

- e) access the resource locator associated with a click-through of the sponsorship label when the user clicks through on the sponsorship label (p. 37, lines 13-16);

- f) retrieve a first advertisement from a local memory cache (p. 26, lines 11-17; p. 38, lines 4-8);

- g) display the first advertisement in the client window (p. 38, lines 3-4; p. 39, lines 13-14).

### **Independent Claim 21**

A method of displaying advertisements (Fig. 5, 520; p. 26, lines 10-11; p. 29, lines 1-2) to a user of an online service provider (p. 5, line 17 – p. 6, line 17; p. 13, line 16) using a client application (Fig. 2, 110; p. 15, line 17 - p. 16, line 2) on a local device (Figs 1 and 2, 100; p. 13, line 17 – p. 14, line 8), the local device including an input device (Fig. 1, 102; p. 14, lines 1-3) and an output device (Fig. 1, 101; p. 14, line 1), the user using the client application for accessing an online service provider and a web server (Figs. 1 and 2, 130 and 150; p. 13, lines 12-18; p. 15, lines 3-8) associated with the online service provider, the method comprising:

- a) the client application commencing an online session by establishing a communication channel from the local device to an online server of the online service provider (Fig. 4, 410; Fig. 5, 525; p. 16, lines 15-16; p. 22, lines 6-11; p. 30, lines 3-4), the client application operating independently of an Internet browser and operating concurrently with the Internet browser (Fig. 2, 110 and 160; p. 15, line 14 - p. 16, line 2; p. 16, lines 8-12; p. 17, lines 17-19; p. 33, lines 4-6);

- b) the client application displaying a client window (Fig. 3, 200; p. 18, lines 13-15) on the output device (Figs. 1 and 3, 101) of the local device, the client window remaining fully visible so long as the online session with the online service provider persists (p. 21, lines 7-18), wherein the client window is displayed independently of a browser window generated by the Internet browser (Fig. 3, 200 and 300; p. 18, lines 13-16);

c) the client application causing at least one advertisement to be displayed in the client window (p. 26, lines 9-11; p. 27, lines 6-9; p. 33, lines 3-4; p. 38, lines 3-4; p. 39, lines 13-14);

d) the client application allowing the user to access data from the web server by the user using the input device to interact with the client window and the Internet browser (p. 17, line 16 – p. 18, line 5; p. 22, lines 6-8; p. 24, 11-14, 16-18; p. 33, lines 4-6);

e) the client application monitoring the user's interaction with the client window and the Internet browser (p. 30, line 18-19; ) and assembling a usage history for the user based on the user's interaction, the usage history being descriptive of the subject matter of the data that the user accessed from the web server (p. 42, lines 7-14);

f) the client application receiving an instruction from the user to terminate the online session (Fig. 9, 920; p. 40, lines 1-5);

g) the client application displaying an exit window on the output device of the local device (Fig. 9, 925; p. 40, lines 6-9), wherein the exit window includes an advertisement box associated with an exit window advertisement (p. 40, lines 9-11), the exit window displayed independently of the browser window generated by the Internet browser (p. 40, lines 3-4);

h) the client application receiving from the online server an identification of an exit window advertisement for display to the user, the exit window advertisement selected by the online server based upon the usage history, wherein a subject matter of the exit window advertisement is related to the subject matter described in the usage history (p. 41, line 15 – p. 42, line 10; p. 42, line 17 – p. 43, line 2);

i) the client application receiving instructions from the online server to display the exit window advertisement in the advertisement box of the exit window (Fig. 9, 930; p. 40, lines 6-11; p. 43, lines 9-11);

j) the client application causing the exit window advertisement to be displayed in the advertisement box of the exit window (Fig. 9, 930; p. 40, lines 6-11; p. 43, lines 9-11; p. 45, lines 15-18).

**(vi) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The Final Office Action rejects claims 1-25 under 35 USC § 103(a) as unpatentable over the combination of Angles (US 5,933,811) and Filepp (US 5,347,632) in further view of [1] Pegoraro (Washington Post newspaper article) or [2] Mandel (Canadian Business article) or [3] Hassett (US 6,807,558). Claims 1, 7, 11, 15 and 21 are independent claims. The totality of the limitations recited in each of the independent claims is neither taught nor suggested by the combination of references because the “client application” as claimed includes features which are neither taught by nor suggested in the combination of cited references.

**(vii) ARGUMENT**

**A. Summary of Argument**

The Final Office Action asserts that the majority of the limitations from the claims are taught by Angles. However, the Final Office Action fails to show where Angles (or the other references) teaches or suggests a the “client application” having the limitations recited in the independent claims.

Claim 1 recites a client application “commencing an initial online session with the online service provider to gain access to the Internet”, “operating independently of an Internet browser and operating concurrently with the Internet browser”, “receiving sponsorship data from the online service provider”, “causing a client window to be displayed on the output device, the client window remaining fully visible so long as the online session with the online service provider persists, wherein the client window is displayed independently of a browser window generated by the Internet browser”, “displaying a sponsorship label on the client window by referring to the resource locator associated with the sponsorship label to be displayed”, and “causing a first advertisement to be displayed in the client window”. The Final Office Action fails to show where Angles teaches each and every one of these limitations. Moreover, the combination of cited references fails to teach or suggest a client application having the entirety of the claimed functionality.



Claim 7 recites a client application “commencing an online session with the online service provider”, “operating independently of an Internet browser and operating concurrently with the Internet browser”, “receiving sponsorship data from the online service provider”, “causing a client window to be displayed on the output device, the client window remaining fully visible and on top of all other windows so long as the online session with the online service provider persists, wherein the client window is displayed concurrently with a browser window generated by the Internet browser”, “causing the sponsorship label to be displayed on the client window”, and “causing the first advertisement to be displayed in the client window”. The Final Office Action fails to show where Angles teaches each and every one of these limitations. Moreover, combination of cited references fails to teach or suggest a client application having the entirety of the claimed functionality.

Claim 11 recites a system for causing a local device to “commence an online session with an online service provider through which the user accesses the Internet”, “display a client window on an output device of the local device, the client window remaining fully visible and on top of all other windows so long as the online session persists and the client window is displayed independently of and concurrently with a browser window generated by an Internet browser”, “obtain sponsorship data from the online service provider”, “display the sponsorship label in the client window”, and “display the first advertisement in the client window”. The Final Office Action fails to show where Angles teaches each and every one of these limitations. Moreover, the combination of cited references fails to teach or suggest a local device having the entirety of the claimed functionality.

Claim 15 recites a system for causing a local device to “commence an online session with the online service provider”, “obtain sponsorship data from the online service provider”, “display a client window on the output device, the client window remaining fully visible and on top of all other windows while the online session persists with the online service provider, wherein the client window is displayed independently of a browser window generated by an Internet browser”, “display the sponsorship label in the client window”, “retrieve a first advertisement from a local memory cache”, and “display the first advertisement in the client window”. The Final Office Action fails to

show where Angles teaches each and every one of these limitations. Moreover, combination of cited references fails to teach or suggest a local device having the entirety of the claimed functionality.

Claim 21 recites a client application “commencing an online session by establishing a communication channel from the local device to an online server of the online service provider”, “displaying a client window on the output device of the local device, the client window remaining fully visible so long as the online session with the online service provider persists, wherein the client window is displayed independently of a browser window generated by the Internet browser”, and “causing at least one advertisement to be displayed in the client window”. The Final Office Action fails to show where Angles teaches each and every one of these limitations. Moreover, the combination of cited references fails to teach or suggest a client application having the entirety of the claimed functionality.

As such, the Final Office Action fails to assert a *prima facie* case of obviousness.

In addition, the independent claims are patentable over Angles and the cited combination of references.

#### **A. Claim 1 is Patentable Over the Cited References**

##### **1. Angles**

The Final Office Action fails to show where Angles (or the other references for that matter) teaches or suggests a **client application** “commencing an **initial** online session with the online service provider to **gain access to the Internet**”.

The Final Office Action again directs us to the teachings of Angles at 7:53-60 which states:

In operation, a consumer directs the consumer computer 12 to communicate with the content provider computer 14 via the communication medium 20. Once the consumer computer 12 establishes a communication link with the content provider computer 14, the content provider computer 14 transfers an

electronic page 32 to the consumer computer 12. The preferred electronic page 32 contains an embedded advertisement request 26.

The Examiner asserts that this portion of Angles teaches “connecting to an online service provider”. This short analysis begs the question, namely, does Angeles teach or suggest a client application “commencing an initial online session with the online service provider to gain access to the Internet”? We assert that Angles does not.

The cited portion of Angles does not teach a client application as claimed. The following are the deficiencies of Angles with respect to claim 1. Claim 1 recites a **client application** “commencing an **initial** online session with the online service provider **to gain access to the Internet**”. However, the cited portion of Angles does not teach a client application that starts an initial online session. The cited portion of Angles (col. 7, lines 53-57) only states that “a **consumer** directs the consumer computer 12 to communicate with the content provider computer 14 via the communication medium 20.” Angles is silent as to how the “consumer directs the consumer computer 12 to communicate with the content provider computer 14.” Angles does not explain how the “consumer directs the consumer computer 12 to communicate with the content provider computer 14.” If the Examiner is asserting that the consumer is the client application, this cannot be so.

Angles does not teach or suggest a client application as claimed. Angles teaches that the consumer computer 12 utilizes several operational modules including a consumer browser module 40, a consumer member code 22 and an advertising storage medium 44. The consumer browser module 40 (hereinafter referred to as the consumer browser) is a software program which allows a consumer to access different content providers through the communication medium 20. (Angles col. 10, lines 42-50)

However, none of these components described in Angles teach or suggest the client application having the features as claimed.

Angles teaches the use of a browser, namely Internet Explorer and Netscape Navigator, to access content providers and states that

One of ordinary skill in the art, however, will recognize that numerous other types of access software could also be used to implement the present invention. These other types of access software could, for example, be other types of Internet browsers, custom network browsers, two-way communications software, cable modem software, point-to-point software and the like. (Angles, col. 10, lines 53-59)

And similarly, in an Advisory Action mailed July 12, 2007, the Examiner states that “Angles teach the feature of starting an online session via client-server network”, citing Angles col. 5, lines 62. We agree that Angles describes a client-server model and explains that a web browser is the client in the described model. (Angles, col. 5, line 62 - col. 6, line 3.) However, this again begs the question. This portion of Angles does not teach a client application “commencing an initial online session with the online service provider to gain access to the Internet”. Angles does not teach or suggest a client application “commencing an initial online session with the online service provider to gain access to the Internet” as recited in claim 1.

Moreover, claim 1 recites both a client application and a browser application that operate independently from one another and concurrently with one another. Specifically, claim 1 recites a client application “operating independently of an Internet browser and operating concurrently with the Internet browser”. The Final Office Action wholly fails to address this limitation. Nowhere does the Final Office Action attempt to direct us to where Angles (or any other reference) teaches the claimed client application and browser application that operate independently from one another and concurrently with one another. As such, the Final Office Action fails to state a *prima facie* case of obviousness.

Because the Final Office Action fails to show that Angles (or the other references) teach or suggest assert a client application “commencing an initial online session with the online service provider to gain access to the Internet”, the Office Action fails to make a *prima facie* case of obviousness. As such, the rejection should be withdrawn.

Because the Final Office Action fails to show that Angles (or the other references) teach or suggest assert a client application and browser application that operate independently from one

another and concurrently with one another, the Office Action fails to make a *prima facie* case of obviousness. As such, the rejection of claim 1 should be withdrawn.

## **2. Filepp**

The Final Office Action states that “Filepp teaches a system and method in which the advertisements are displayed in a persistent window by an advertisement application that is operating independently of other applications (e.g. a browser) running in the other windows.” (Final Office Action, p. 3) In contrast, the Final Office Action also states that Filepp “is relied upon to teach the feature of separate windows (labeled as partitions in Filepp) running distinct applications such as an advertisement window and a browser steps[b-f].” That is, each of the different partitions of Filepp can have a different program running in them, including an advertisement application and an Internet browser.

However, the “advertisement application” of Filepp is not a “client application” as claimed. That is, the “advertisement application” does not have the functionality of the “client application” as claimed. The advertisement application of Filepp does not perform the entirety of the functionality of the client application. Specifically, the advertisement application of Filepp teaches the feature of multiple separate windows on a screen. Nothing more. The advertisement application of Filepp does not perform “commencing an initial online session with the online service provider to gain access to the Internet” as recited in claim 1. The advertisement application of Filepp does not perform “causing a client window to be displayed on the output device, the client window remaining fully visible so long as the online session with the online service provider persists, wherein the client window is displayed independently of a browser window generated by the Internet browser” as recited in claim 1.

Moreover, the advertisement application of Filepp does not perform “displaying a sponsorship label on the client window by referring to the resource locator associated with the sponsorship label to be displayed, the sponsorship label comprising a hypertext link, wherein, when the user clicks on the sponsorship label, the client application causes the local device to access the resource locator associated with a click-through of the sponsorship label” as recited in claim 1.

The advertisement application of Filepp does not perform “causing a first advertisement to be displayed in the client window, [such that it] retrieves the first advertisement from a memory cache local to the local device”.

Filepp does not remedy the deficiencies of Angeles asserted above.

As such, the combination of Filepp and Angeles and the other cited references fails to teach a client application that has each and every one of the features recited in claim 1.

### **3. Pegoraro and Mandel and Hassett**

The Final Office Action cites to news stories of Pegoraro and Mandel and the Hassett patent “to teach the feature of accessing the Internet via a provider with a persistent and fully visible advertising window with the targeted ad being cyclically displayed. However, the cited references do not teach this limitation as applied to a client application as claimed.

Pegoraro states that “the few inches of your screen that are taken over by an advertising banner.” Pegoraro is silent as to how the advertising banner appears on the screen, just that it does. This in no way teaches a client application having the functionality recited in claim 1, and, in particular “the client application causing a client window to be displayed on the output device, the client window remaining fully visible so long as the online session with the online service provider persists”. In addition, Pegoraro fails to teach or suggest a client window having both an ad and a sponsorship label as recited in claim 1.

Similarly, Mandel states that “there is a bar on the top of the screen that serves as a mini-billboard.” Mandel is silent as to how the mini-billboard appears on the screen, just that it does. This in no way teaches a client application having the functionality recited in claim 1, and, in particular “the client application causing a client window to be displayed on the output device, the client window remaining fully visible so long as the online session with the online service provider persists”. In addition, Mandel fails to teach or suggest a client window having both an ad and a sponsorship label as recited in claim 1.

As to Hassett, this patent teaches that “A portion of the data viewer screen is always occupied by an advertisement image 258.” (Hassett, 15:27-30) However, this teaching is of a persistent ad image and not a persistent window. As such, Hassett teaches a persistent ad image and not a persistent window. That is, in Hassett, there is no teaching or suggestion of a “client window remaining fully visible so long as the online session with the online service provider persists” as recited in claim 1. In addition, Hassett fails to teach or suggest a client window having both an ad and a sponsorship label as recited in claim 1.

In addition, the teachings of Pegoraro, Mandel and Hassett fail to remedy the deficiencies of Angles and Filepp asserted above.

#### **4. Conclusion as to Claim 1**

The Final Office Action fails to provide a citation to a reference that teaches “the client application causing a client window to be displayed on the output device, the client window remaining fully visible so long as the online session with the online service provider persists”. Further, the Final Office Action fails to provide a citation to a reference that teaches the client application “operating independently of an Internet browser and operating concurrently with the Internet browser”. In addition, the Final Office Action fails to provide a citation to a reference that teaches or suggests a client window having both an ad and a sponsorship label as recited in claim 1.

Because the Final Office Action fails to assert that the combination of references teach or suggest each and every one of the claimed limitations, the Office Action fails to make a *prima facie* case of obviousness. As such, the rejection should be withdrawn.

Further, the combination of references fails to teach or suggest all of the limitations recited in claim 1. Therefore, claim 1 is patentable over the cited references.

#### **C. Claim 7 is Patentable Over the Cited References**

Claim 7 recites a method with a client application having various functionality, including:

“the client application commencing an online session with the  
**online service provider**”;

“the client application operating independently of an Internet browser and operating concurrently with the Internet browser”;

“the client application causing a client window to be displayed on the output device, the client window remaining **fully visible and on top of all other windows so long as the online session with the online service provider persists**, wherein the client window is displayed concurrently with a browser window generated by the Internet browser”. (emphasis added)

“the client application causing the sponsorship label to be displayed on the client window, the sponsorship label comprising a hypertext link to be accessed if a user clicks on the sponsorship label.”

Neither Filepp nor Angles nor the other cited references disclose a client application having **all** of these limitations.

The Final Office Action fails to provide a citation to a reference that teaches a client application “commencing an online session with the online service provider”. The Final Office Action fails to provide a citation to a reference that teaches a client application “operating independently of an Internet browser and operating concurrently with the Internet browser”. The Final Office Action fails to provide a citation to a reference that teaches a client application “causing a client window to be displayed on the output device, the client window remaining fully visible and on top of all other windows so long as the online session with the online service provider persists, wherein the client window is displayed concurrently with a browser window generated by the Internet browser”. In addition, the Final Office Action fails to provide a reference that teaches or suggests a client window having both an ad and a sponsorship label as recited in claim 7.

To the extent the arguments above concerning claim 1 are pertinent to claims 7, they are hereby incorporated by reference.

Because the Final Office Action fails to assert that the combination of references teach or suggest each and every one of the limitations recited in claim 7, the Final Office Action fails to make a *prima facie* case of obviousness. As such, the rejection of claim 7 should be withdrawn.



Further, the combination of references fails to teach or suggest all of the limitations recited in claim 7. Therefore, claim 7 is patentable over the cited references.

**D. Claim 11 is Patentable Over the Cited References**

The rejection fails to assert that the combination of references teach or suggest each and every one of the claimed limitations. As such, the Office Action fails to make a *prima facie* case of obviousness.

The Final Office Action fails to provide a citation to a system for causing a local device to “commence an online session with an online service provider through which the user accesses the Internet” as recited in claim 11. The Final Office Action fails to provide a citation to a system for causing a local device to “display a client window on an output device of the local device, the client window remaining fully visible and on top of all other windows so long as the online session persists and the client window is displayed independently of and concurrently with a browser window generated by an Internet browser” as recited in claim 11.

Because the Final Office Action fails to assert that the combination of references teach or suggest each and every one of the claimed limitations of claim 11, the Final Office Action fails to make a *prima facie* case of obviousness. As such, the rejection of claim 11 should be withdrawn.

Further, the combination of references fails to teach or suggest all of the limitations recited in claim 11. Therefore, claim 11 is patentable over the cited references.

**E. Claim 15 is Patentable Over the Cited References**

The rejection fails to assert that the combination of references teach or suggest each and every one of the limitations recited in claim 15. As such, the Office Action fails to make a *prima facie* case of obviousness.

The Final Office Action fails to provide a citation to a reference that teaches a system for causing a local device to “commence an online session with the online service provider”, to “obtain sponsorship data from the online service provider”, and to “display a client window on the output

device, the client window remaining fully visible and on top of all other windows while the online session persists with the online service provider, wherein the client window is displayed independently of a browser window generated by an Internet browser” as recited in claim 15.

Because the rejection fails to assert that the combination of references teach or suggest each and every one of the limitations recited in claim 15, the Final Office Action fails to make a *prima facie* case of obviousness. As such, the rejection of claim 15 should be withdrawn.

Further, the combination of references fails to teach or suggest all of the limitations recited in claim 15. Therefore, claim 15 is patentable over the cited references.

#### **F. Claim 21 is Patentable Over the Cited References**

The rejection fails to assert that the combination of references teach or suggest each and every one of the limitations recited in claim 21. As such, the Final Office Action fails to make a *prima facie* case of obviousness.

The Final Office Action fails to provide a citation to a reference that teaches a client application “commencing an online session by establishing a communication channel from the local device to an online server of the online service provider” as recited in claim 21. The Final Office Action fails to provide a citation to a reference that teaches a client application “displaying a client window on the output device of the local device, the client window remaining fully visible so long as the online session with the online service provider persists, wherein the client window is displayed independently of a browser window generated by the Internet browser” as recited in claim 21.

Because the Final Office Action fails to assert that the combination of references teach or suggest each and every one of the limitations recited in claim 21, the Final Office Action fails to make a *prima facie* case of obviousness. As such, the rejection of claim 21 should be withdrawn.

Further, the combination of references fails to teach or suggest all of the limitations recited in claim 21. Therefore, claim 21 is patentable over the cited references.

## CONCLUSION AND RELIEF

In view of the foregoing, it is believed that all claims patentably define the subject invention over the prior art of record and are in condition for allowance. The undersigned requests that the Board overturn the rejection of all claims and hold that all of the claims of the above referenced application are allowable.

Respectfully submitted,



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Date: October 8, 2007

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**(viii) CLAIMS APPENDIX**

The claims involved in this Appeal are as follows:

1. A method of displaying advertisements to a user of an online service provider using a client application on a local device, the local device including an input device and an output device, the client application accessing an online server associated with the online service provider and providing access to the Internet, the method comprising:

- a) the client application activating;
- b) the client application commencing an initial online session with the online service provider to gain access to the Internet, the client application operating independently of an Internet browser and operating concurrently with the Internet browser;
- c) the client application receiving sponsorship data from the online service provider, the sponsorship data comprising a sponsorship object including a resource locator associated with a sponsorship label to be displayed and a resource locator associated with a click-through of the sponsorship label;
- d) the client application causing a client window to be displayed on the output device, the client window remaining fully visible so long as the online session with the online service provider persists, wherein the client window is displayed independently of a browser window generated by the Internet browser;
- e) the client application displaying a sponsorship label on the client window by referring to the resource locator associated with the sponsorship label to be displayed, the sponsorship label comprising a hypertext link, wherein, when the user clicks on the sponsorship label, the client application causes the local device to access the resource locator associated with a click-through of the sponsorship label;
- f) the client application causing a first advertisement to be displayed in the client window, wherein the client application retrieves the first advertisement from a memory cache local to the local device;

- g) the client application receiving a second advertisement from the online server;
- h) the client application causing the second advertisement to be displayed in the client window.

2. The method of displaying advertisements to a user of an online service provider using a client application on a local device of claim 1, wherein the client application commences the initial online session by establishing a communication channel via a public switched telephone network from the local device to the online server.

3. The method of displaying advertisements to a user of an online service provider using a client application on a local device of claim 1, wherein the client application commencing an initial online session comprises:

- a) the client application transmitting a request to the online service provider to authorize the local device to interact with a web server;
- b) the client application receiving from the online service provider authorization for the local device to interact with the web server.

4. The method of displaying advertisements to a user of an online service provider using a client application on a local device of claim 1, wherein the resource locator associated with the click-through of the sponsorship label comprises a uniform resource locator associated with an Internet web page.

5. The method of displaying advertisements to a user of an online service provider using a client application on a local device of claim 1, wherein the sponsorship label is located on a title bar of the client window.

6. The method of displaying advertisements to a user of an online service provider using a client application on a local device of claim 1, wherein the second advertisement is included within a play list comprising at least one ad object, each ad object comprising a resource locator for a given advertisement, a resource locator for a click-through associated with the given advertisement, and at

least one display attribute for the given advertisement, the play list further specifying an order in which the advertisements identified in the play list are to be displayed.

7. A method of displaying sponsorship information to a user of an online service provider using a client application on a local device, the local device including an input device and an output device, the client application accessing an online server associated with the online service provider and providing access to the Internet, the method comprising:

- a) the client application activating;
- b) the client application commencing an online session with the online service provider, the client application operating independently of an Internet browser and operating concurrently with the Internet browser;
- c) the client application receiving sponsorship data from the online service provider, the sponsorship data comprising a sponsorship object including a resource locator associated with a sponsorship label to be displayed;
- d) the client application causing a client window to be displayed on the output device, the client window remaining fully visible and on top of all other windows so long as the online session with the online service provider persists, wherein the client window is displayed concurrently with a browser window generated by the Internet browser;
- e) the client application causing the sponsorship label to be displayed on the client window, the sponsorship label comprising a hypertext link to be accessed if a user clicks on the sponsorship label;
- f) the client application retrieving a first advertisement from a memory cache local to the local device;
- g) the client application causing the first advertisement to be displayed in the client window.

8. The method of displaying advertisements to a user of an online service provider using a client application on a local device of claim 7, additionally comprising the online service provider

transmitting a second advertisement to the local device and the client application causing the second advertisement to be displayed in the client window.

9. The method of displaying advertisements to a user of an online service provider using a client application on a local device of claim 7, wherein the client application commences the online session by establishing a communication channel via a public switched telephone network from the local device to the online service provider.

10. The method of displaying advertisements to a user of an online service provider using a client application on a local device of claim 7, wherein the client application commencing an online session comprises:

- a) the client application transmitting a request to the online service provider to authorize the local device to interact with a web server;
- b) the client application receiving from the online server authorization for the local device to interact with the web server.

11. A system for selecting advertisements for display to a user of an online service provider, the system comprising a computer program product comprising a computer usable medium having software for causing a local device to:

- a) commence an online session with an online server provider through which the user accesses the Internet;
- b) display a client window on an output device of the local device, the client window remaining fully visible and on top of all other windows so long as the online session persists and the client window is displayed independently of and concurrently with a browser window generated by an Internet browser;
- c) obtain sponsorship data from the online service provider, the sponsorship data comprising a sponsorship object including a resource locator associated with a sponsorship label to be displayed in the client window;

d) display the sponsorship label in the client window, the sponsorship label comprising a hypertext link associated with a resource locator to be accessed if a user clicks on the sponsorship label;

e) retrieve a first advertisement from a memory cache local to the local device;

f) display the first advertisement in the client window.

12. The system for selecting advertisements for display to a user of an online service provider of claim 11, the software further for causing the local device to obtain a second advertisement from the online service provider and further for causing the local device to display the second advertisement in the client window.

13. The system for selecting advertisements for display to a user of an online service provider of claim 11, wherein the local device commences the online session by establishing a communication channel via a public switched telephone network from the local device to the online service provider.

14. The system for selecting advertisements for display to a user of an online service provider of claim 11, wherein the client application causes the local device to commence the online session by causing the local device to transmit a request to the online service provider to authorize the local device to interact with a web server.

15. A system for selecting advertisements for display to a user of an online service provider, the system comprising a computer program product comprising a computer usable medium having software for causing a local device to:

a) commence an online session with the online service provider;

b) obtain sponsorship data from the online service provider, the sponsorship data comprising a sponsorship object including a resource locator associated with a sponsorship label to be displayed and a resource locator associated with a click-through of the sponsorship label;

c) display a client window on the output device, the client window remaining fully visible and on top of all other windows while the online session persists with the online service



provider, wherein the client window is displayed independently of a browser window generated by an Internet browser;

- d) display the sponsorship label in the client window, the sponsorship label comprising a hypertext link;

- e) access the resource locator associated with a click-through of the sponsorship label when the user clicks through on the sponsorship label;

- f) retrieve a first advertisement from a local memory cache;

- g) display the first advertisement in the client window.

16. The system for selecting advertisements for display to a user of an online service provider of claim 15, wherein the local device commences an initial online session by establishing a communication channel via a public switched telephone network from the local device to the online service provider.

17. The system for selecting advertisements for display to a user of an online service provider of claim 15, wherein the client application causes the local device to commence the online session by causing the local device to transmit a request to the online service provider to authorize the local device to interact with a web server.

18. The system for selecting advertisements for display to a user of an online service provider of claim 15, wherein the resource locator associated with the click-through of the sponsorship label comprises a uniform resource locator associated with an Internet web page.

19. The system for selecting advertisements for display to a user of an online service provider of claim 15, wherein the sponsorship label is located on a title bar of the client window.

20. The system for selecting advertisements for display to a user of an online service provider of claim 15, the computer usable medium having further software for causing a local device to:

- obtain a second advertisement from the online service provider, wherein the second advertisement is included within a play list comprising at least one ad object, each ad object

comprising a resource locator for a given advertisement, a resource locator for a click-through associated with the given advertisement, and at least one display attribute for the given advertisement, the play list further specifying an order in which the advertisements identified in the play list are to be displayed;

display the second advertisement in the client window.

21. A method of displaying advertisements to a user of an online service provider using a client application on a local device, the local device including an input device and an output device, the user using the client application for accessing an online service provider and a web server associated with the online service provider, the method comprising:

a) the client application commencing an online session by establishing a communication channel from the local device to an online server of the online service provider, the client application operating independently of an Internet browser and operating concurrently with the Internet browser;

b) the client application displaying a client window on the output device of the local device, the client window remaining fully visible so long as the online session with the online service provider persists, wherein the client window is displayed independently of a browser window generated by the Internet browser;

c) the client application causing at least one advertisement to be displayed in the client window;

d) the client application allowing the user to access data from the web server by the user using the input device to interact with the client window and the Internet browser;

e) the client application monitoring the user's interaction with the client window and the Internet browser and assembling a usage history for the user based on the user's interaction, the usage history being descriptive of the subject matter of the data that the user accessed from the web server;

f) the client application receiving an instruction from the user to terminate the online session;

g) the client application displaying an exit window on the output device of the local device, wherein the exit window includes an advertisement box associated with an exit window advertisement, the exit window displayed independently of the browser window generated by the Internet browser;

h) the client application receiving from the online server an identification of an exit window advertisement for display to the user, the exit window advertisement selected by the online server based upon the usage history, wherein a subject matter of the exit window advertisement is related to the subject matter described in the usage history;

i) the client application receiving instructions from the online server to display the exit window advertisement in the advertisement box of the exit window;

j) the client application causing the exit window advertisement to be displayed in the advertisement box of the exit window.

22. The method of displaying advertisements to a user of an online service provider using a client application on a local device of claim 21, further comprising the client application providing the user with the option to cancel the instruction to terminate the online session.

23. The method of displaying advertisements to a user of an online service provider using a client application on a local device of claim 21, wherein the exit window advertisement is associated with a resource locator, the method further comprising:

a) the client application recognizing the user performing a click-through on the exit window advertisement using the input device of the local device;

b) the client application causing the resource locator associated with the exit window advertisement to be loaded in a browser window in response to the click-through;

c) the client application canceling the instruction to terminate the online session;

d) the client application removing the exit window from the output device.

24. The method of displaying advertisements to a user of an online service provider using a client application on a local device of claim 21, wherein the communication channel comprises a dial-up communication channel.

25. The method of displaying advertisements to a user of an online service provider using a client application on a local device of claim 21, wherein the communication channel comprises a constant connection communication channel, and wherein the client application establishing a communication channel comprises:

- a) the client application transmitting a request to the online server of the online service provider to authorize the local device to interact with the web server;
- b) the client application providing authorization for the local device to interact with the web server.

**(ix) EVIDENCE APPENDIX**

No evidence has been submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title. No other evidence has been entered by the examiner and relied upon by appellant in the appeal.

**(x) RELATED PROCEEDINGS APPENDIX**

Since there are no applications currently being appealed that may directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal, there are no copies of decisions rendered by a court or the Board.